

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 53

January 26, 1995, 8:04 p.m.
Page S-1611 Temp. Record

UNFUNDED MANDATES/Enforcement of Laws Protecting Children

SUBJECT: Unfunded Mandate Reform Act of 1995 . . . S. 1. Kassebaum perfecting amendment No. 226 to the Boxer amendment No. 203.

ACTION: AMENDMENT AGREED TO, 99-0

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-41, 43-45, 47-52, and 54-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The Boxer amendment would exempt from the requirements of this Act any Federal mandates that are "intended to study, control, deter, prevent, prohibit, or otherwise mitigate child pornography, child abuse, and illegal child labor."

The Kassebaum second-degree perfecting amendment to the Boxer amendment would strike the provisions of the Boxer amendment and insert in lieu thereof language to express the sense of the Senate and of the House that the President should fully enforce existing laws against child pornography, child abuse, and child labor.

NOTE: Following the vote, the Senate tabled a Boxer second-degree perfecting amendment to the Boxer amendment, as amended (see vote No. 54), then adopted the Boxer amendment, as amended, by voice vote.

Those favoring the amendment contended:

All Senators agree that sexual exploitation of children, exploitation of their labor, and child abuse are serious matters. Laws on these subjects should be vigorously enforced. The Federal Government should enforce its laws, and State and local governments

(See other side)

YEAS (99)				NAYS (0)		NOT VOTING (1)	
Republican (52 or 100%)		Democrats (47 or 100%)		Republicans (0 or 0%)	Democrats (0 or 0%)	Republicans (1)	Democrats (0)
Abraham	Inhofe	Akaka	Hollings			Helms- ²	
Ashcroft	Jeffords	Baucus	Inouye				
Bennett	Kassebaum	Biden	Johnston				
Bond	Kempthorne	Bingaman	Kennedy				
Brown	Kyl	Boxer	Kerrey				
Burns	Lott	Bradley	Kerry				
Chafee	Lugar	Breaux	Kohl				
Coats	Mack	Bryan	Lautenberg				
Cochran	McCain	Bumpers	Leahy				
Cohen	McConnell	Byrd	Levin				
Coverdell	Murkowski	Campbell	Lieberman				
Craig	Nickles	Conrad	Mikulski				
D'Amato	Packwood	Daschle	Moseley-Braun				
DeWine	Pressler	Dodd	Moynihan				
Dole	Roth	Dorgan	Murray				
Domenici	Santorum	Exon	Nunn				
Faircloth	Shelby	Feingold	Pell				
Frist	Simpson	Feinstein	Pryor				
Gorton	Smith	Ford	Reid				
Gramm	Snowe	Glenn	Robb				
Grams	Specter	Graham	Rockefeller				
Grassley	Stevens	Harkin	Sarbanes				
Gregg	Thomas	Heflin	Simon				
Hatch	Thompson		Wellstone				
Hatfield	Thurmond						
Hutchison	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

should enforce their laws. The Kassebaum amendment would express the sense of the Senate that the Federal Government should fully enforce its laws in these areas. The amendment would also strike the blanket exemption that the Boxer amendment would give the Federal Government to impose unfunded mandates regarding child labor, abuse, and sexual exploitation on State and local governments. We approve of both these aspects of the Kassebaum amendment.

Unfortunately, last Congress the Clinton Administration bizarrely misinterpreted congressional intent in an effort to weaken a Federal law against child pornography (*Knox v United States*). The Senate approved, 100-0, a condemnation of this action. Finally, after repeated prodding, the Clinton Administration reversed itself and agreed to interpret the law as Congress intended. The Kassebaum amendment before us would attempt to forestall such future attempts to weaken Federal law enforcement efforts to protect children, by expressing the sense of the Senate that Federal laws on child physical and sexual abuse as well as on child labor should be fully enforced.

At the same time, the amendment would appropriately strike the language in the underlying amendment that would allow the Federal Government to impose unfunded mandates on States on these subjects without first considering the costs of those mandates. The imposition of such mandates regarding child labor would be especially inappropriate. When one speaks of child labor in America today, one is not speaking about young kids in salt mines. Basically, one is speaking about farm kids working in the fields after school or city kids working in fast food restaurants. Though there is nothing nefarious or exploitive about such employment, Federal laws to regulate it seem to be predicated on the belief that children are being subjected to slave labor conditions in unsafe sweat shops. Thus, last Congress we had a proposal by Senator Metzenbaum to require every child under the age of 16 who wanted to work to first obtain a work certificate. That certificate would have to have been signed by at least one parent and by school officials, who would have had to certify that the child had adequate grades, and that certificate would then have to have been approved by the State and the Federal Department of Labor. Passing such a law would have imposed enormous, unneeded paperwork burdens just for a kid to work after school on a farm or in a restaurant. Happily, it was never enacted.

Under the Boxer amendment, as proposed, the Federal Government would never have to consider the costs of these types of mandates when it imposed them on the States. This failure to consider costs would be inappropriate. Everyone, at every level of government, has the best interests of children at heart. The Federal Government does not need to create laws to protect children for States to enforce and pay for; the States can and do create their own laws as they deem appropriate. If Congress finds that a State actually is being negligent in protecting children, by a simple majority vote in Congress it will be possible, and likely, that Congress will vote to impose an unfunded mandate on that State to straighten up. The presumption embodied in the Boxer amendment that States will always be less protective than the Federal Government, though, is false and insulting.

In sum, the Kassebaum amendment would encourage the Federal Government to enforce its own laws regarding children, which it has shown reluctance to do recently, instead of looking for fault with State governments. It is a meritorious amendment that we are certain Senators will support.

While favoring the amendment, some Senators expressed the following reservations:

We support the Kassebaum amendment's call on the Federal Government to enforce fully its laws to protect children, so we will be pleased to vote in favor of this amendment, but we oppose its striking of the language in the underlying Boxer amendment that would provide an exemption from this Act for unfunded mandates on the subjects of child abuse, child labor, and child sexual exploitation. As drafted, S. 1 contains exemption clauses for certain categories of mandates in recognition of the fact that there are some areas that are so important (like civil rights, constitutional protections, international treaties, and national emergencies) that we should not have to move through procedural hurdles of considering their costs before we impose mandates on them. Just as we have determined that laws to protect women, minorities, and the elderly from discrimination are so important that we should exempt them from S. 1, we should also exempt laws to protect children from abuse. These laws are necessary--a few States do not even have pornography laws that apply specifically to children. The Federal Government has a right, and a duty, to order the States to protect children, and it should not pause to consider the costs of those orders. If our colleagues agree, they will join us in supporting the Kassebaum amendment, and will then join us in reinstating the language this amendment would strike on the vote to follow (see vote No. 54).